

PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

PCT

NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL SEARCH REPORT AND
THE WRITTEN OPINION OF THE INTERNATIONAL
SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

To:
ALDO J. TEST
DORSEY & WHITNEY LLP
4 EMBARCADERO CENTER
SUITE 3400
SAN FRANCISCO, CALIFORNIA 94111
Comments on Abstract due
Rspn to Int'l Search due 7/04/05
Review Foreign Refs (U.S.) 6/04/05

Date of mailing
(day/month/year) 04 MAY 2005

Applicant's or agent's file reference
FP72178AJT (See)

FOR FURTHER ACTION See paragraphs 1 and 4 below

International application No.
PCT/US04/13918

International filing date
(day/month/year) 05 May 2004 (05.05.2004)

Applicant
GUAVA TECHNOLOGIES, INC.

1. ☒ The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.
- Filing of amendments and statement under Article 19:**
The applicant is entitled, if he so wishes, to amend the claims of the international application (see Rule 46):
- When?** The time limit for filing such amendments is normally two months from the date of transmittal of the international search report.
- Where?** Directly to the International Bureau of WIPO, 34 chemin des Colombettes
1211 Geneva 20, Switzerland, Facsimile No.: +41 22 740 14 35
- For more detailed instructions,** see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.
3. ☐ **With regard to the protest** against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:
- ☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.
- ☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

4. Reminders

Shortly after the expiration of **18 months** from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within **19 months** from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase **until 30 months** from the priority date (in some Offices even later); otherwise, the applicant must, **within 20 months** from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of **30 months** (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the ISA/ US
Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
Facsimile No. (703) 305-3230

Authorized officer

JOSE G. DEES

Telephone No. (571) 272-1607

Jose G. Dees

PATENT COOPERATION TREATY

PCT

INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference FP72178AJT	FOR FURTHER ACTION <div style="display: flex; justify-content: space-between; font-size: small;"> see Form PCT/ISA/220 as well as, where applicable, item 5 below. </div>	
International application No. PCT/US04/13918	International filing date (<i>day/month/year</i>) 05 May 2004 (05.05.2004)	(Earliest) Priority Date (<i>day/month/year</i>) 12 June 2003 (12.06.2003)
Applicant GUAVA TECHNOLOGIES, INC.		

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 3 sheets.

☒ It is also accompanied by a copy of each prior art document cited in this report.

1. Basis of the Report

a. With regard to the **language**, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ The international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).

b. ☐ With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, see Box No. I.

2. ☐ **Certain claims were found unsearchable** (See Box No. II)

3. ☐ **Unity of invention is lacking** (See Box No. III)

4. With regard to the **title**,

☒ the text is approved as submitted by the applicant.

☐ the text has been established by this Authority to read as follows:

5. With regard to the **abstract**,

☒ the text is approved as submitted by the applicant.

☐ the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. With regard to the **drawings**,

a. the figure of the **drawings** to be published with the abstract is Figure No. 1

☒ as suggested by the applicant.

☐ as selected by this Authority, because the applicant failed to suggest a figure.

☐ as selected by this Authority, because this figure better characterizes the invention.

b. ☐ none of the figures is to be published with the abstract.

INTERNATIONAL SEARCH REPORT

International application No.

PCT/US04/13918

A. CLASSIFICATION OF SUBJECT MATTER

IPC(7) : G01N 15/06, 21/49

US CL : 250/573

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

U.S. : 250/573, 458.1, 459.1; 356/317

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched
NONE

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)
Please See Continuation Sheet

C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	US 5,567,294 A (DOVICH et al) 22 October 1996 (22.10.1996), Figure 2.	1, 2
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A		3
X	US 6,091,843 A (HORESH et al) 18 July 2000 (18.07.2000), Figures 1-4A.	4, 5
---		-----
Y		6
X,E	US 2004/0096977 A1 (RAKESTRAW et al) 20 May 2004 (20.05.2004), Figure 7.	4, 5
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Y,E		6

☐

Further documents are listed in the continuation of Box C.

☐

See patent family annex.

* Special categories of cited documents:	"T" later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention
"A" document defining the general state of the art which is not considered to be of particular relevance	"X" document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone
"E" earlier application or patent published on or after the international filing date	"Y" document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art
"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)	"&" document member of the same patent family
"O" document referring to an oral disclosure, use, exhibition or other means	
"P" document published prior to the international filing date but later than the priority date claimed	

Date of the actual completion of the international search

06 April 2005 (06.04.2005)

Date of mailing of the international search report

04 MAY 2005

Name and mailing address of the ISA/US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Authorized officer

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INTERNATIONAL SEARCH REPORT

International application No.

PCT/US04/13918

Continuation of B. FIELDS SEARCHED Item 3:

EAST: USPAT; US-PGPUB; EPO; JPO; DERWENT

search terms: particle\$1 same fluore\$6 and acoust\$8 near2 filter\$3; particle\$1 same fluore\$6 and tunable near2 filter\$3; ("6271042").PN.; (multi adj color or multicolor) with particle\$1 with analyzer\$1; (color) with particle\$1 with analyzer\$1; flow near2 cytometer\$1 and tunable near2 filter\$3; flow near2 cytometer\$1 and acoust\$6 near2 filter\$3; flow near2 cytometer\$1 and acoust\$8 near2 filter\$3; fluore\$6 and tunable near2 filter\$3; ((250/458.1) or (250/459.1) or (356/317)).CCLS.; ((250/458.1) or (250/49.1) or (356/317)).CCLS. and tunable near3 filter\$3; ((250/458.1) or (250/459.1) or (359/317)).CCLS.; and acoust\$8 near3 filter\$3; ((250/458.1) or (250/459.1) or (356/317)).CCLS. and acoust\$8 near3 filter\$3 not ((250/458.1) or (250/459.1) or (356/317)).CCLS. and tunable near3 filter\$3; goix-phillippe\$.in. lingane-paul\$.in.; particle\$1 same fluore\$6 same excit\$7 and acoust\$8; ("5377003").PN.; particle\$1 same fluore\$6 same excit\$7 and tunable with filter\$3; particle\$1 same fluore\$6 same excit\$7 and tunable with filter\$3 not particle\$1 same fluore\$6 same excit\$7 adn acoust\$8; particle\$1 same fluore\$6 and tunable with filter\$3; particles\$1 same fluore\$6 and tunable with filter\$3 not particle\$1 same fluore\$6 same excit\$7 and acoust\$8; particles\$1 same fluore\$6 and tunable with filter\$3; fluore\$6 and tunable with filter\$3 and capillar\$5; fluore\$6 and tunable with filter\$3 and capillar\$5 not particle\$1 same fluore\$6 and tunable with filter\$3; fluore\$6 and tunable with filter\$3 and capillar\$5; fluore\$6 and tunable with filter\$3 and flow\$5; fluore\$6 and tunable adj filter\$3 and flow\$5; fluore\$6 and tunable with filter\$3 adn flow\$5 not fluore\$6 and tunable with filter\$3 adn capillar\$5 not particle\$1 same fluore\$6 and tunable with filter\$3

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
ALDO J. TEST
DORSEY & WHITNEY LLP
4 EMBARCADERO CENTER
SUITE 3400
SAN FRANCISCO, CALIFORNIA 94111

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference EP72178AJT (JCB)		Date of mailing (day/month/year) 04 MAY 2005 FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/US04/13918	International filing date (day/month/year) 05 May 2004 (05.05.2004)	Priority date (day/month/year) 12 June 2003 (12.06.2003)
International Patent Classification (IPC) or both national classification and IPC IPC(7): G01N 15/06, 21/49 and US Cl.: 250/573, 458.1, 459.1; 356/317		
Applicant GUAVA TECHNOLOGIES, INC.		
Rspn to Written Opinion due <u>8/04/05</u>		

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application


2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer JOSE G. DEES Telephone No. (571) 272-1607 <div style="text-align: right;"></div>
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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US04/13918

Box No. I Basis of this opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US04/13918

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>2, 3, 6</u>	YES
	Claims <u>1, 4, 5</u>	NO
Inventive step (IS)	Claims <u>3, 6</u>	YES
	Claims <u>1, 2, 4, 5</u>	NO
Industrial applicability (IA)	Claims <u>1-6</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claim 1 lacks novelty under PCT Article 33(2) as being anticipated by Dovichi et al. (US 5,567,294). Dovichi disclose (Fig. 2) an analyzer, comprising: a capillary (one of 26); means for projecting a light beam (130) through the capillary; means for causing a sample containing sample particles to fluoresce (dye); a tunable filter (139) for receiving the emitted light and repetitively pass light at sequential wavelengths including the distinct wavelengths; and a detector (138) for detecting a light from the filter and provide an output pulse for each light pulse.

Claims 4 and 5 lack novelty under PCT Article 33(2) as being anticipated by Horesh et al. (US 6,091,843). Horesh disclose (Figs.) an analyzer and method for analyzing particles which emit light at distinct wavelengths as the particles pass through an analyzing volume, comprising: a tunable filter; fro receiving the emitted light and repetitively pass light at sequential wavelengths including the distinct wavelengths; and a single detector (CCD) for receiving the light from the tunable filter and provide output signals for each distinct wavelength as the corresponding particle passes through the analyzing volume. Horeesh further disclose providing excitation light as claimed.

Claim 2 lacks an inventive step under PCT Article 33(3) as being obvious over Dovichi. Dovichi disclose the claimed invention as set forth above. Dovichi do not specifically disclose the type of tunable filter. However, it is well known that acousto-optic filters are a type of tunable filters. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use an acousto-optical filter in the apparatus of Donvichi to provide the desired known tunable response.

Claims 3 and 6 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest a single detector multicolor analyzer and method as claimed.

Claims 1-6 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US04/13918

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

Claims 1-4 and 6 are objected to under PCT Rule 66.2(a)(iii) as containing the following defect(s) in the form or contents thereof:

Claim 4: "a sequential wavelengths" is improper.

Claim 1: "the output light" and "said acoustic-optic filter" lacks proper antecedent basis.

Claim 6: it is unclear in its given context what it means for "light emitted by a particle is passed a number of times". What is doing the passing?

Claims 2 and 3 are indefinite based on their dependencies.